IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
LETTERS PATENT APPEAL NO.345 OF 2002
IN
WRIT PETITION NO.3481 OF 2002

The Managing Director,
Shri Bhogawati Sahakari Sakhar
Karkhana Ltd., Shahu Nagar,
Tal: Karveer, Dist: Kolhapur. .... Appellant

\- Versus -

1. Shri Dhondiram Tukaram Patil,
r/o Bechani, Post: Aarey,
Tal: Karvir, Dist: Kolhapur.

2. The Labour Court,
Kolhapur.

3. Industrial Court,
Kolhapur. .... Respondents

Shri S.S. Pakale for the Appellant.

Shri M.S. Topkar for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: JUNE 9, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Perused the records. The appellant challenges the order dated 4-7-2002 passed by the learned single Judge in Writ Petition No.3481 of 2002 whereby the writ petition filed by the appellant was dismissed. The challenge is two-fold. Firstly, the learned single Judge erred in relying upon the decision in the matter of **Nabisha Hussein Shaikh v. K.K. Uppal & Anr.,** reported in 1992 I CLR 148 ignoring the earlier

decision of the Division Bench of this Court in **N.N. Rao v. Greaves Cotton & Co. and others,** reported in 1973 (I) LLJ 81 (Bom.) while dealing with the issue pertaining to examination of the presenting officer as the witness for the employer, and secondly on the ground that the learned single Judge did not at all consider the ground of challenge in relation to the finding arrived at by the lower Courts on the point of the enquiry being vitiated on account of rejection of the application of the employee to allow him to be represented by an Advocate in the domestic enquiry.

2. Few facts relevant for the decision are that the appellant is a co-operative sugar factory and the respondent No.1 was employed as a slip boy in the sugar factory of the appellant. On the ground of alleged falsification of accounts and records and misappropriation of money, the respondent No.1 was issued a charge-sheet which was followed by a domestic enquiry. In the course of the domestic enquiry, the respondent No.1 applied for permission to engage an Advocate to defend him in the said enquiry which was rejected by the enquiry officer. On conclusion of the enquiry, the management accepted the report which resulted in the dismissal of the respondent No.1 from service. The same was sought to be challenged by filing an application bearing No.(BIR) 6 of 1982 for reinstatement and backwages before the Labour Court,

Kolhapur wherein it was held that the enquiry was vitiated and therefore the order of dismissal was set aside. The matter was carried in appeal by the appellant which came to be dismissed by the respondent No.3 whereupon the appellant preferred Writ Petition No.3481 of 2002 which came to be rejected by the impugned order.

3. As regards the first ground of challenge, drawing attention to the decision in **N.N. Rao's** case (supra), the learned Advocate for the appellant submitted that the Division Bench of this Court therein had clearly held that there was nothing wrong in allowing the presenting officer to be the witness for the management. Being so, mere observation in **K.K. Uppal's** case (supra) to the effect that allowing such presenting officer to be the witness is unhealthy and improper practice could not have been a justifiable ground for rejection of the writ petition. According to the learned Advocate, it was necessary for the Court to analyse the materials on record to consider whether the examination of the presenting officer as a witness resulted in vitiating the enquiry and having not done so, the impugned order rejecting the writ petition solely on the basis of the said observation in K.K. Uppal's case has resulted in miscarriage of justice. As regards the second ground, the learned Advocate for the appellant has submitted that the Clause 25(5) of the Standing Orders applicable

to the parties clearly specifies the representatives who could be allowed to represent the employee in the course of the domestic enquiries and that the same do not include an Advocate and therefore mere rejection of the application of the employee to permit him to be represented by an Advocate in the domestic enquiry could not have been the ground to hold that the enquiry was vitiated. However, the learned single Judge did not at all consider the said aspect of the matter and totally ignoring the same, rejected the petition.

4. The learned Advocate for the respondent No.1, on the other hand, submitted that there is no specific bar provided either under the Standing Orders applicable to the parties or under the provisions of the Bombay Industrial Relations Act, 1946 for allowing the employee to engage an Advocate to represent him in a domestic enquiry and considering the fact that the charges were of serious nature and there was a hand-writing expert examined as a witness in support of the charges, the claim of the workman for necessity of assistance of an Advocate to him in the course of the enquiry was well justified and the enquiry officer having ignored the same while rejecting the request for allowing the employee to be represented by an Advocate in the domestic enquiry had clearly acted arbitrarily and consequently the enquiry was vitiated and therefore no fault could have been found with the finding arrived at

by the respondent Nos.2 and 3 in that regard and merely because there has no elaborate discussion in that regard in the impugned order, it cannot be held to be a miscarriage of justice. According to the learned Advocate for the respondent No.1, since the learned single Judge has duly considered the case of the appellant as regards the issue pertaining to the examination of the presenting officer as the witness and relying upon the decision of the Division Bench rejected the petition, there is no scope for interference in the said order in appeal.

5. It cannot be disputed that the respondent Nos.2 and 3 had held the enquiry to have been vitiated on two grounds, namely that the presenting officer himself was examined as a witness to the management and secondly that the application of the employee for being represented by his Advocate was rejected. It is also a matter of record that the writ petition was filed challenging both the grounds on which the enquiry was held to be vitiated. Bare perusal of the impugned order discloses that the order merely deals with the submission in relation to the issue pertaining to the examination of the presenting officer as the witness for the management. The impugned order has not dealt with or even considered in any manner the challenge to the second ground on which the enquiry was held to be vitiated. At the same time, the rejection of the

petition is apparently merely on the basis of the observations made in K.K. Uppal's case to the effect that the examination of the presenting officer as the witness is unhealthy and improper practice and should be avoided. But it is to be noted that in the same decision the Division Bench had also observed that there is no absolute prohibition to a presenting officer being examined as a witness. At the same time, the Division Bench, in the earlier case i.e. in N.N. Rao's case had held that there is nothing wrong in examining the presenting officer to be the witness for the management and allowing him to conduct the proceedings. The law as such on the point of examination of the presenting officer as the witness being clear and there being no bar provided in that regard, merely because the presenting officer is examined as a witness, that by itself cannot be a justification to conclude the enquiry to have been vitiated. Undoubtedly, in a given case if the employee is able to point out that the examination of the presenting officer has in fact caused prejudice to the employee or for any other reason and on that count the enquiry can be said to be vitiated, it is necessary for the Court to analyse the materials on record in that regard vis-a-vis the contention sought to be raised by the employee and to arrive at an appropriate finding before holding the enquiry to have been vitiated on that count. However, in no case mere examination of the presenting officer as the witness can

itself lead to the conclusion that the enquiry is vitiated. It was, therefore, necessary for the learned single Judge to ascertain whether the respondent Nos.2 and 3 have analysed the materials in that regard to hold that the enquiry stood vitiated on account of examination of the presenting officer as the witness and having not done so before dismissing the petition, certainly the appellant is justified in contending that it has resulted in miscarriage of justice.

6. Equally it is true that once the petition has been filed on two grounds - one in relation to the issue pertaining to the examination of the presenting officer as the witness to the management and the other relating to the rejection of the application for allowing the employee to be represented by an Advocate having resulted in vitiating the enquiry, it was necessary to deal with the said issue also. Having not considered the same, the impugned order is rendered bad in law.

7. For the reasons stated above, therefore, the impugned order cannot be sustained and is liable to be set aside and the matter remanded to the learned single Judge to consider the petition afresh, in accordance with the provisions of law.

8. The petition, therefore, succeeds for the reasons stated above and is hereby allowed. The impugned order

is hereby set aside and the matter is remanded to the learned single Judge to consider the petition afresh, in accordance with the provisions of law.

(R.M.S. Khandeparkar, J.)

(Anoop V. Mohta, J.)